**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH**

Regular Second Appeal No.1120 of 2000
Date of Decision: *July 29, 2008*

Parduman Singh

.....APPELLANT(S)

*VERSUS*

The State of Punjab & Another

.....RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE AJAI LAMBA

PRESENT: - Mr. Vijay Rana, Advocate, for the appellant.

Mr. H.S. Brar, Deputy Advocate General, Punjab.

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AJAI LAMBA, J

This regular second appeal has been filed by the plaintiff against judgment of reversal. The plaintiff brought a suit for declaration to the effect that order dated 10.04.1991 passed by Senior Superintendent of Police, Jalandhar whereunder the plaintiff was dismissed from service and order dated 04.10.1991 passed by Deputy Inspector General of Police, Jalandhar Range whereby the appeal of the plaintiff against order dated 10.04.1991 was rejected, were illegal, void and liable to be declared as such.

In a nutshell, the factual matrix is that the appellant-plaintiff was posted as Constable in Mahsanpur Police Post attached to Police Station Nakodar, Jalandhar District on 25.02.1990. SHO Police Station Nakodar found

the appellant-plaintiff under influence of liquor and, therefore, he was taken to police Station Nakodar wherefrom he was taken for medical examination. The doctor in civil hospital found him drunk during medical examination. Departmental enquiry was conducted which found him guilty.

The S.S.P. Jalandhar, on considering the enquiry file, issued show cause notice to the plaintiff as to why he should not be dismissed from service. The notice was served on the plaintiff on 15.03.1991. Since no reasonable cause could be shown, the plaintiff was dismissed from service vide the impugned order dated 10.04.1991. An appeal was carried against the order which has been dismissed by the other impugned order by D.I.G. range.

Learned counsel appearing for the appellant has challenged the findings recorded by the first appellate Court on Issue No.1. Issue No.1 reads as under:-

> "1. Whether the order dt. 4.10.91 passed by Deputy Inspector General of Police, Jalandhar, range, Jalandhar Cantt. whereby the appeal of the plaintiff is rejected and in order dt. 10.4.91 passed by the SSP, Jalandhar whereby the plaintiff is dismissed from service is illegal and void? OPP"

While the issue had been decided by the Trial Court in favour of the plaintiff-appellant, the first appellate Court, on an appeal filed by the defendants, has reversed the findings.

The substantial question of law raised by the learned counsel for the appellant is:-

> "Whether the judgment is passed on perverse reading of evidence and in disregard to the evidence produced by the plaintiff on the relevant facts".

The findings have been reversed by the first appellate Court only on the ground that the Civil Court is not to sit over the judgment of depart-

mental authorities once regular enquiry has been conducted and the plaintiff has been associated.

Contention of the learned counsel for the appellant-plaintiff is that the authorities have proceeded on the premise that the plaintiff was found drunk in the police post. In medical examination, however, blood test or any other conclusive test was not conducted so as to establish the charge.

The other argument of the learned counsel is that admittedly the plaintiff was not on duty, however, in the police post, therefore, he could not have been proceeded against.

Learned counsel for the respondent-State has contended that proper procedure has been followed in departmental enquiry. The Civil Court cannot look into the charges or evidence led before the Enquiry Officer. Principle of natural justice has been followed and, therefore, calls for no interference with the impugned judgment.

I have heard the learned counsel for the parties and have gone through the record. The reason for dismissal of the plaintiff is the allegation of he having been found in drunk condition. The plaintiff was taken to Civil Hospital, Nakodar wherein the doctor in his report has mentioned that plaintiff had consumed liquor. This being the sole cause of proceeding against the plaintiff, it was required to be determined by the authorities as to whether the plaintiff indeed had consumed liquor or not.

The only material available with the authorities was the report of the doctor of the civil hospital, Nakodar who stated that the plaintiff had consumed liquor. This observation of the doctor has been recorded on the basis of the plaintiff giving out smell of alcohol and no other fact or circumstance.

Dr. Shingara Singh of Civil Hospital, in his statement before the enquiry officer, has stated that though smell of alcohol was coming

from the mouth of the plaintiff, but he was talking normally. In his opinion he had consumed alcohol but was not intoxicated. As against the statement of the doctor from Civil hospital, Dr. V.P. Kataria has appeared as DW-1 whose statement is to the effect that on 25.02.1990, the plaintiff had come with complaint of severe stomach ache. It was detected that there was swelling on account of which bouts of severe stomach ache had occurred. Pain killer was prescribed. He was asked not to consume alcohol during the treatment. Medicine "B.G. Phos" was prescribed to be consumed half an hour before meal. After consuming this drug, the patient smells of alcohol. The medicine in fact does not contain alcohol. The patient was registered on 25.02.1990 at Sr. No. 728 in the register. Perusal of the Lower Court record shows that Ex.P-2 is a slip issued by the doctor of Katarial Maternity and General Hospital, Jalandhar City bearing registration no. OPD no. 728. B.G. Phos is one of the drugs prescribed on 25.02.1990.

There is no material on the record to indicate that the plaintiff had consumed alcohol in presence of any other witness. There is no recovery of glass or bottle from the area. In these facts and circumstances, it is required to be considered as to whether there was any material to show the misconduct alleged against the plaintiff.

The charge of grave misconduct made against the plaintiff was of consumption of alcohol. The only evidence coming forth is statement of a doctor who has deposed that plaintiff was smelling of alcohol. There, however, is no other fact or circumstance to support the plea. Since the plaintiff was taken to the civil hospital, various tests could have been conducted to verify the consumption of alcohol including a blood test. Admittedly, this was not done. The doctor from civil hospital has admitted that the plaintiff was talking in a

normal manner and was not under influence of alcohol, that is to say that he was not intoxicated. This creates suspicion in the case set up by the defendant.

Contrary to the case of the defendant-respondent, not only the doctor from Kataria hospital has come on record to depose in favour of the plaintiff-appellant that he had prescribed a drug on account of ailment reported by the plaintiff, after consumption of which, the patient smells of alcohol, even the prescription slip has been exhibited on record. There is no material on the record to dispute these facts.

In this case, therefore, there is no evidence to indicate that the plaintiff was intoxicated, was in inebriated state or had even consumed alcohol. Since the only charge on account of which the impugned order has been issued was of consumption of alcohol in police post, there being no evidence to prove the fact and the allegation having been clearly disproved by the plaintiff-appellant, the impugned order is rendered without any basis, material or reason tenable in law.

The argument addressed by the learned counsel appearing for the respondent-State that appropriate procedure had been followed and, therefore, Civil Court cannot look into the charges or evidence, in the facts and circumstances of the case, does not hold good. Manifest injustice has been done and the case being without any evidence has shocked the conscious of the Court being without any evidence, the Court cannot shut its eyes to the action taken by the respondent-defendant viz. of dismissal of the plaintiff from service without any material or legally tenable ground. In somewhat similar circumstances, in **2005 (1) Recent Services Judgments 132, Gulshan Kumar Vs. State of Haryana** considered the legality of order of imposing major penalty. The relevant portion reads as under:-

*"During the course of hearing of the instant case, learned counsel for the respondents was pointedly required to inform this Court whether or not the petitioner was off duty at the time when inspection was conducted at 8.30 P.M. on 14.12.1984. In furtherance of the aforesaid desire of this Court, the respondents have produced original service record which only depicts that the petitioner was on duty on the relevant date, namely on 14.12.1984. No material has, however, been produced before this Court to show whether or not the petitioner was on duty or off duty at 8.30 P.M. Even the statements of witnesses produced by the respondents before the enquiry officer to establish the charge levelled against the petitioner, do not lead to any clear finding that the petitioner was on duty at 8.30 P.M. on 14.12.1984. In view of the above, it is natural to accept the opinion expressed by the Appellate Authority to the effect that the petitioner was not on duty at the time when inspection conducted by the District Inspector, Gurgaon, wherein he found the petitioner smelling of alcohol. Accordingly, the controversy will have to be adjudicated upon by accepting that the petitioner was not on duty at the time when checking was conducted. In view of the fact that the charge-sheet dated 16.2.1985 does not even allege that the petitioner was misconducting himself in any manner whatsoever, on account of his alleged intoxication, it will be natural to conclude that besides the allegation of having consumed alcohol, there was no other allegation of misconduct against the petitioner. Thus viewed, the judgments rendered by this Court in Rattan Lal Vs. The State of Haryana, 1983 (2) SLR 243 and Sukhdev Singh Vs. The State of Punjab & Others 1983 (2) Services Law Reporter 645 squarely apply to the controversy in hand since the charges levelled against the petitioner do not establish that he was in an aberration state during the duty hours, and further on account of the fact that no other allegation of misconduct, connected with the state of intoxication, was levelled against the petitioner.*

*6. In so far as the second contention is concerned, namely the non-consideration of the statement by any of the authorities, made by DW-2 Dr. Jai Bhagwan, who had been produced by the petitioner in support of his claim that the drug prescribed for him by DW-2, although, had a smell akin to that of alcohol. It was, as a matter of fact, non-intoxicating. The instant contention was pressed by the petitioner before the punishing authority, before the appellate authority as well as before the revisional authority. However, none of the aforesaid authorities dealt with the instant plea. The instant plea has again been raised at the hands of the petitioner in paragraph 11(v) of the writ petition. The response in the written statement is, that by not relying on the statement of Dr. Jai Bhagwan DW-2 (a government doctor of the Civil Hospital, Gurgaon), the respondents had committed no legal infirmity. In view of the factual position narrated above, it is apparent that the petitioner must succeed on the second contention as well. The pointed plea raised by the petitioner was that he was not under the influence of alcohol. His contention, clearly and categorically throughout, has been that he was prescribed certain drugs*

*by Dr. Jai Bhagwan, a government doctor posted at the Civil Hospital, Gurgaon. It was also the vehement contention of the petitioner, that although, the prescribed drug had the smell of alcohol, it had no intoxicating effect. The statement of Dr. Jai Bhagwan to the aforesaid effect remained unrebutted and uncontested as he was not subjected to cross-examination on the aforesaid issue. Since a government doctor had appeared to support the claim of the petitioner before the enquiry officer, it was not justified for the authorities to brush aside the aforesaid claim without recording a positive finding in respect thereto. As noticed hereinabove, since the statement of Dr. Jai Bhagwan DW-2 had remained unrebutted, the same could have constituted an effective reply to the charges levelled against him on account of the non-rebuttal thereof, the petitioner should have been exonerated. Since the charge of being under the influence of alcohol was based on only one consideration, namely, that the petitioner was smelling of alcohol, had the statement of Dr. Jai Bhagwan DW-2 been considered, no such conclusion could have been drawn.*

*In view of the above, the instant writ petition is allowed. The punishment order dated 4.7.1985 is set aside. Accordingly, the appellate order as well as the revisions/order dated 26.11.1985 and 12.6.1986 respectively are also set aside. The petitioner shall be entitled to all consequential benefits flowing out of the setting aside of the orders referred to above. The monetary benefits due to the petitioner shall be calculated within two months from the date of submission of a certified copy of this order by the petitioner to the concerned quarters, and paid to him within a further period of one month."*

Considering the totality of facts and circumstances viz. that the plaintiff was off duty; the plaintiff admittedly as per the witness of the defendant itself was not intoxicated; the plaintiff has produced evidence by way of statement of Dr. V.P. Kataria DW-1 and the prescription slip which justifies smell of alcohol; there was no other material recovered (bottle of whiskey or glass etc.) to indicate that the plaintiff had consumed alcohol; blood of the plaintiff was not tested nor any other medical test was carried to ascertain consumption of liquor by him; no other witness has come to the witness box to say that it was in his presence that the plaintiff had consumed alcohol, the action taken by the respondents viz. that dismissal from service is not sustainable in law or in facts.

Having examined the evidence/material in detail, I find that the relevant evidence has been perversely read and interpreted in so much as the relevant tests had not been conducted by Dr. Shingara Singh of Civil Hospital and therefore, there was no material to indicate that the plaintiff was intoxicated. The evidence led by the plaintiff by way of statement of Dr. V.P. Kataria and the prescription slip and other related circumstances as noticed hereinabove have been ignored and disregarded causing manifest injustice. There was infact no material available to indicate that the plaintiff who admittedly was off duty, was intoxicated.

In view of the above, the findings recorded on Issue No.1 are reversed. The substantial question of law raised by the plaintiff stands substantiated and while considering the issue raised, the appeal has to be allowed.

In my opinion, I am also supported by pronouncement of this Court in Gulshan Kumar's case (supra) to which detailed reference has been given herein above. The circumstances constrain me to interfere with the departmental proceedings and to look into the facts and circumstances which I have examined.

The appeal is allowed. The judgment and decree of the First Appellate Court are set aside and that of the Trial Court are maintained. The suit of the plaintiff-appellant is accordingly decreed.

No order as to costs.

(AJAI LAMBA)
JUDGE

July 29, 2008

Shivani/avin